

Message Text

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FM AMEMBASSY BOGOTA

TO SECSTATE WASHDC IMMEDIATE 6848

C O N F I D E N T I A L BOGOTA 8474

E.O. 11652: GDS

TAGS: PFOR, CASC, AINF, CO

SUBJECT: SUBPOENA OF EMBASSY CONSULAR ASSISTANT

SUMMARY:

LOCAL CONSULAR ASSISTANT SUBPOENAED BY BOGOTA MUNICIPAL COURT FOR TESTIMONY CON-

CERNING MATTERS CONNECTED WITH HER EMPLOYMENT.

EMBASSY POSITION THAT SUCH TESTIMONY IN CONFLICT WITH PROVISIONS OF VIENNA CONSULAR CONVENTION REJECTED BY LOCAL JUDGE. EMBASSY COMPLAINING TO FOREIGN MINISTRY. REQUEST CONFIRMATION EMBASSY POSITION AND INSTRUCTIONS.

1. ON AUGUST 18 MARIA CRISTINA GOMEZ M., A FOREIGN SERVICE LOCAL CONSULAR ASSISTANT IN THE AMERICAN CITIZENS UNIT OF THIS EMBASSY, MADE AN APPEARANCE BEFORE THE JUZGADO PENAL MUNICIPAL 17 (MUNICIPAL PENAL COURT NO. 17). MISS GOMEZ HAD BEEN SUB-PENAED TO APPEAR AS A WITNESS IN A CASE BEFORE THAT COURT. SINCE MISS GOMEZ DID NOT KNOW WHETHER SHE WOULD BE ASKED TO TESTIFY CONCERNING MATTERS EVOLVING OUT OF HER EMPLOYMENT AT THE EMBASSY, SHE WAS ACCOMPANIED BY A VICE CONSUL WHO UPON ARRIVAL INQUIRED ABOUT THE NATURE OF THE CASE.

2. WHEN THE COURT OFFICIALS STATED THAT MISS GOMEZ WAS ASKED TO TESTIFY CONCERNING MATTERS KNOWN TO HER IN HER CAPACITY AS AN EMPLOYEE OF THE CONSULAR SECTION OF THE EMBASSY, THE COURT CLERK WHO WAS TAKING THE DEPOSITION WAS ASKED TO EXCUSE MISS GOMEZ FROM TESTIFYING. THE VICE CONSUL NOTED THAT THE MATTERS SHE WOULD

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BE ASKED TO DIVULGE TRADITIONALLY AND LEGALLY HAD BEEN PROTECTED.

THIS APPROACH WAS OVERRULED BY THE JUDGE WHO HELD THAT THIS WAS A "COLOMBIAN COURT OF LAW" AND THAT "ORDINARY COLOMBIAN REGULATIONS APPLIED IN THIS CASE." THE JUDGE FURTHER STATED THAT MISS GOMEZ SHOULD TESTIFY FULLY AND WITHOUT RESTRICTION OR THAT SHE AND THE VICE CONSUL WOULD BE LIABLE FOR WHATEVER PROVISIONS COLOMBIAN LAWS MAKE FOR THOSE WHO FAIL TO COLLABORATE WITH COURTS IN THE MATTER PRESCRIBED BY LAW.

3. THE VICE CONSUL EXPLAINED TO THE JUDGE THAT THIS CASE WAS COVERED BY THE CONSULAR CONVENTION AND THAT FURTHERMORE IF MISS GOMEZ DID TESTIFY SHE COULD BE LIABLE FOR PROSECUTION UNDER THE PRIVACY ACT OF 1974. THE JUDGE REFUSED TO ACCEPT SUCH EXPLANATION AND LIKEWISE REFUSED TO ALLOW THE VICECONSUL TO WITNESS THE TAKING OF THE DEPOSITION WHICH FOLLOWS.

4. MISS GOMEZ LATER TOLD THE EMBASSY OFFICIALS THAT SHE DID NOT PROVIDE THE JUDGE WITH ANY INFORMATION TO WHICH SHE HAD ACCESS UNDER RULES OF CONFIDENTIALITY. SHE ATTEMPTED TO GIVE AS LITTLE DETAIL AS POSSIBLE ABOUT THE CASE UNDER CONSIDERATION.

5. THE EMBASSY IS PARTICULARLY CONCERNED IN THIS CASE SINCE IT NOT ONLY PRESENTS DIFFICULTIES OF A GENERAL NATURE BUT ALSO IN THE CASE CONCERNING FRAUD INVOLVING A COLOMBIAN LAWYER WHO SEEMS TO HAVE PROMISED SEVERAL PERSONS THAT HE COULD PROCURE VISAS FROM THIS EMBASSY.

IN THE PROCESS, HE MENTIONED MISS GOMEZ' NAME, IMPLYING THAT SHE WAS ONE OF HIS INSIDE CONNECTION. THE LAWYER IS KNOWN TO MISS GOMEZ AND

CONSULAR OFFICIALS BUT IN A VERY DIFFERENT CAPACITY. THE LAWYER WAS DEFENSE ATTORNEY FOR AMERICAN CITIZEN, ANGELA WEINER, WHO WAS INCARCERATED UNTIL HER RECENT ESCAPE. IT WAS IN THE COURSE OF ROUTINE PROCEDURES ON BEHALF OF MISS WEINER THAT MISS GOMEZ CAME IN CONTACT WITH THE LAWYER. IN ORDER TO ANSWER THE JUDGE'S QUESTIONS -- SPECIFICALLY, WHEN, WHERE AND UNDER WHAT CIRCUMSTANCES DID MISS GOMEZ COME TO KNOW THE LAWYER -- SHE WOULD HAVE TO VIOLATE PROVISIONS OF THE PRIVACY ACT. AND INQUISITIVE JUDGE OR CROSS-EXAMINING ATTORNEY COULD HAVE CONTINUED WITH A LINE OF

INQUIRY IN THE WEINER CASE.

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6. THE EMBASSY HAS GIVEN MISS GOMEZ WRITTEN INSTRUCTIONS BOTH IN ENGLISH AND IN SPANISH, SIGNED BY THE CONSUL GENERAL AND BEARING THE CONSULAR IMPRESSION SEAL, INSTRUCTING HER TO RESPECTFULLY DECLINE TO

TESTIFY FURTHER, BASING OUR INSTRUCTIONS IN PARAGRAPH 3 OF ARTICLE 44 OF THE VIENNA CONVENTION ON CONSULAR RELATIONS. THE PURPOSE OF THESE LETTERS IS TO HELP MISS GOMEZ AVOID

THE NECESSITY OF FURTHER TESTIMONY. WE ARE MAKING AN ORAL COMPLAINT TO THE MINISTRY OF FOREIGN AFFAIRS AND WILL FOLLOW WITH A FORMAL NOTE IF THAT MINISTRY INDICATES SUCH WILL BE NEEDED TO STOP FURTHER ACTION IN THIS MATTER.

7. ACTION REQUEST: (1) THE DEPARTMENT IS REQUESTED TO CONFIRM THE EMBASSY'S INTERPRETATION OF ARTICLE 44 AND SPECIFICALLY THAT THE DEFINITION CONTAINED IN ARTICLE 1 (E) AND (F) SPECIFICALLY INCLUDES FOREIGN SERVICE LOCAL EMPLOYEES OF THE CONSULAR SECTION OF THIS EMBASSY. THE EMBASSY BELIEVES IT MAY BE IMPORTANT TO DEMONSTRATE THAT THE EMBASSY'S CONSULAR SECTION IS A CONSULAR POST UNDER THE DEFINITIONS OF THE CONVENTION. (2) THE DEPARTMENT IS REQUESTED TO CONFIRM THE EMBASSY'S INTERPRETATION THAT LOCAL EMPLOYEES ARE INCLUDED IN THE DEFINITION OF EMPLOYEES IN THE PRIVACY ACT OF 1974. WHILE SUCH EMPLOYEES ARE OBVIOUSLY NOT UNDER THE JURISDICTION OF THE US GOVERNMENT, WE PRESUME THAT THEY WOULD BE LIABLE

FOR SOME DISCIPLINARY ACTION UNDER THE ACT. (3) THE DEPARTMENT IS REQUESTED TO INFORM THE EMBASSY OF WHAT FURTHER ACTIONS, IF ANY, IT DEEMS ADVISABLE IN THIS CASE.
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